

Patent
U.S. Patent Application No. 09/919,461
Attorney's Docket No. 00-5017RCE1

REMARKS

This amendment is responsive to the final Office Action¹ in this RCE1 application mailed August 12, 2005.

Claims 1-5, 7-32 were presented for examination and were rejected. No claims are canceled. No claims are added. Thus, claims 1-5 and 7-32 are pending. The independent claims are 1, 8, 17, 24, 28 and 30.

All independent claims have been amended. No new matter is added. Support for the amendments can be found throughout the specification, claims and drawings as originally filed. In the specification *see*, for example, at least: ¶3 "Sometimes motorists, (i.e., potential customers), for example while on travel, will not stop to get food, because they feel it will take too much time." ¶30 "However, vendor 150 may also include other types of establishments such as restaurants, pharmacies, grocery stores, toll-booths, convenience stores, gas stations, and other classes of vendors where a good or service may be picked up and a trip continued (i.e., where the vendor is not the final destination." Also see ¶40, where food pick-up from a restaurant drive-up window is discussed.

Claims 1-5, 7-12 and 15-32 are rejected under 35 U.S.C. § 102(b) as being anticipated by MORRILL, Jr. (U.S. Patent No. 5,991,749). Claims 13 and 14 are rejected under 35 U.S.C. §

¹ The Office Action may contain a number of statements characterizing the cited reference(s) and/or the claims which Applicant may not expressly identify herein. Regardless of whether or not any such statement is identified herein, Applicant does not automatically subscribe to, or acquiesce in, any such statement. Further, silence with regard to rejection of a dependent claim, when such claim depends, directly or indirectly, from an independent claim which Applicant deems allowable for reasons provided herein, is not acquiescence to such rejection of that dependent claim, but is recognition by Applicant that such previously lodged rejection is moot based on remarks and/or amendments presented herein relative to that independent claim.

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103(a) as unpatentable over MORRILL, Jr. in view of STILP et al. (U.S. Patent No. 5,327,144).

These rejections are respectfully traversed because the references, taken alone or in combination, do not disclose or suggest all elements of the currently amended claims.

Claims 1-5, 7-12 and 15-32 are rejected under 35 U.S.C. § 102(b) as being anticipated by MORRILL. Consider claim 1, for example.

A system configured to facilitate ordering of goods or services by a customer from a vendor having multiple vendor locations while the customer is on travel, the system comprising: one or more base stations configured to receive an abbreviated dialing sequence that corresponds to an order from a mobile terminal used by the customer, both the order being initiated at a remote location by the customer and preparation of the order being initiated at one of the vendor locations by the vendor before the customer arrives at the one of the vendor locations, to reduce wait time of the customer by time-shifting preparation of the order by the vendor to coincide with transit time of the customer; and a processing center coupled between the one or more base stations and the vendor and configured to receive the abbreviated dialing sequence, determine from the remote location the one of the multiple vendor locations to which to transmit customer information, and bill a wireless account of the customer for a monetary amount of the order; wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations which allows the goods or services to be picked-up by the customer and the travel to continue while utilizing the goods or services. (Emphasis added.)

In the final Office Action, on page 5, under "Response to Arguments" the Examiner advises that each argument presented in Applicant's prior response of June 10, 2005 was considered but not deemed persuasive. The reasons given in support of non-persuasiveness of Applicant's arguments are based, exclusively, on the parking lot example of MORRILL with frequent reference to its paragraph bridging columns 6 and 7.

Indeed, the final Office Action relies on MORRILL's disclosing "multiple facilities" in

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column 7, line 5, within the parking garage example of MORRILL, to read on Applicant's "multiple vendor locations." Applicant notes that "facilities" and "locations" are different words with different meanings, but that the issue is mooted now for reasons given below.

In addition, the final Office Action also refers back to the previous Office Action (3/16/05) in which the Examiner states his position with respect to Applicant's recited term "remote", i.e., "a customer is 'remote' from the parking garage until the customer actually enters the garage." Again, the Examiner is relying upon the parking garage example for the position he is taking.

In addition, the "speeds through-put" reference relied upon in the final Office Action, referring to MORRILL column 6, lines 20-25 appears in MORRILL within its discussion of its parking lot example.

Finally, the "this particular parking facility" reference upon which the Examiner relies in support of his position to read MORRILL on Applicant's claim language appears in MORRILL, column 7, within lines 1-5, and this is also within the parking lot example in MORRILL.

Notably, Applicant has presented arguments against at least some of the above noted positions in prior responses and shall not repeat them or offer additional arguments here because the current claim amendment makes these arguments moot. Indeed, by this amendment, Applicant has added a Markush grouping as shown in claim 1 above (*see*, MPEP 2173.05(h), which says that purely mechanical features or process steps may be so claimed). This grouping does not include a parking lot, thereby avoiding the parking lot example presented in MORRILL,

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and thereby avoiding the above-noted positions taken in support of the rejection of claim 1 in the final Office Action which rely solely on that parking lot example².

Therefore, Morrill does not teach or disclose with respect to “the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations”, as recited in claim 1, at least the following claim elements:

- “A system configured to facilitate ordering of goods or services by a customer from a vendor having multiple vendor locations” as recited in claim 1 (Emphasis added);
- “both the order being initiated at a remote location by the customer and preparation of the order being initiated at one of the vendor locations by the vendor before the customer arrives at the one of the vendor locations” as recited in claim 1 (Emphasis added);
- to reduce wait time of the customer by time-shifting preparation of the order by the vendor to coincide with transit time of the customer, as recited in claim 1 (Emphasis added); and
- “a processing center...configured to...determine from the remote location the one of the multiple vendor locations to which to transmit customer information relating to the order” as recited in claim 1 (Emphasis added).

Accordingly the 35 U.S.C. §102(b) rejection of claim 1 is now overcome, since

² The disclosure of MORRILL excluding its parking lot example also does not disclose or suggest all limitations of Applicant's currently amended claim 1. Notably, the final Office Action relies heavily on various passages in the parking lot example disclosure in MORRILL for rejection of claim 1 under 35 U.S.C §102(b).

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MORRILL does not teach or disclose all of the recited limitations of claim 1 which are now

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limited to only the members of the recited Markush grouping. Therefore, it is respectfully submitted that the 35 U.S.C §102 (b) rejection of claim 1 be withdrawn and the claim allowed.

Moreover, MORRILL also does not suggest all of the recited limitations of claim 1 because the service provided by a parking lot is a service which, by its very nature, stops the travel - it stops the customer from proceeding on his/her trip. While the parking service is being provided, the customer's car is necessarily parked in the parking lot thereby causing a discontinuation of the customer's travel unless and until that parking service is no longer provided. But, Applicant's claim 1 recites "wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations which allows the goods or services to be picked-up by the customer and the travel to continue while using the goods or services." (Emphasis added.) Each member of this grouping allows goods or services to be picked-up by the customer and used while the travel continues. But, parking lot service is not "goods or services" that can be picked-up by the customer, and is definitely not a service that allows the travel to continue while it is being used. Rather, the parking lot example teaches away from this concept because it inherently does not allow the travel to continue while it is being used. The car is not traveling when it is parked. It is respectfully submitted, therefore, that any hypothetical 35 U.S.C. §103(a) rejection of claim 1 utilizing MORRILL alone or in conjured combination with other references would not be meritorious because the parking lot example teaches the opposite of what Applicant is claiming and therefore cannot even begin to suggest Applicant's claim 1.

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On page 4 of the final Office Action, it indicates that MORRILL fails to explicitly disclose calculating the location of the mobile terminal based on signal information received at one or more base stations using time delay information and global positioning system information, and Applicant agrees. The final Office Action relies on secondary reference STILP to teach this deficiency in MORRILL. Regardless of what STILP actually teaches or doesn't teach, it fails to cure the deficiencies of MORRILL noted above with respect to its 35 U.S.C §102(b) rejection of claim 1.

The other independent claims, namely, claims 8, 17, 24, 28 and 30 are amended to include a similar limitation to that discussed above with respect to claim 1. Accordingly, all of these other independent claims are allowable for the same reasons as given above with respect to claim 1.

All other pending claims, dependent from one or another of the allowable independent claims, are likewise allowable, at least for reasons based on their dependency, directly or indirectly, from allowable base claims.

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CONCLUSION


In view of the foregoing amendments and remarks, Applicant respectfully requests the Examiner's reconsideration of this application, and timely allowance of the pending claims.

Applicant believes that this amendment does not enlarge the scope of the claims as it delimits a generic class of vendors to a select number, does not raise new issues that require further searching or consideration and does not add new matter. But, this amendment does place the application in better form for appeal by reducing the issues for appeal. Therefore, it is respectfully requested that this amendment be entered under 37 C.F.R. §1.116.

To the extent necessary, a petition for an extension of time under 37 C.F.R. §1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 07-2347 and please credit any excess fees to such deposit account.

Verizon Corporate Services Group, Inc.

By: _____


Joel Wall
Reg. No. 25,648

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Customer No. 32127
600 Hidden Ridge Drive
Mail Code: HQE03H14
Irving, Texas 75038
(972) 718-4800